

## REMARKS

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

### Rejection under 35 U.S.C. § 102

In the Office Action, beginning at page 2, Claims 1-10 and 17 were again rejected under 35 U.S.C. § 102(e), as reciting subject matters that allegedly are anticipated by *Ehr*. Applicant respectfully requests reconsideration of this rejection.

Applicant has previously described some aspects of the present invention, for example in the Amendment filed 21 September 2006; Applicant will therefore not further burden the record with a redundant summary, and merely incorporates by reference those descriptions.

Claim 1 relates to an expandable medical device having a combination of elements including, *inter alia*, a plurality of S-shaped bridging elements connected between interconnected ends of struts in adjacent cylindrical tubes, wherein each of the bridging elements are connected entirely above a midline of V-shapes on one cylindrical tube and entirely below the midline of V-shapes on an adjacent cylindrical tube, wherein each of the bridging elements cross the midline of the V-shapes three times, and wherein said adjacent struts interconnected at alternating ends define an apex for each V-shape, and wherein said midlines connect directly opposed V-shape apices directed at each other.

Claim 10 relates to an expandable medical device having a combination of elements including, *inter alia*, a plurality of S-shaped bridging elements connected between the interconnected ends of the struts in adjacent cylindrical tubes, wherein each of the bridging elements cross a midline of the V-shapes three times and are connected entirely above the midline of the V-shapes on one cylindrical tube and entirely below the midline of the V-shapes on an adjacent cylindrical tube.

Claim 17 relates to an expandable medical device having a combination of elements including, *inter alia*, a plurality of S-shaped bridging elements connected between

interconnected ends of struts in adjacent cylindrical tubes, wherein each of the bridging elements are connected entirely above a midline of V-shapes on one cylindrical tube and entirely below the midline of V-shapes on an adjacent cylindrical tube, wherein each of the bridging elements cross the midline of the V-shapes three times, wherein the adjacent struts interconnected at alternating ends define an apex for each V-shape, and wherein the bridging elements extend between directly opposed V-shape apices in a first of said plurality of cylindrical tubes and said V-shape apices in a second of said plurality of cylindrical tubes.

The prior art, including *Ehr*, fails to identically disclose or describe a device having the claimed combination of elements.

As discussed at great length in Applicant's response filed 17 January 2007, the Office Action demonstrated a misunderstanding of the scopes of the claims. More specifically, while the Office Action identifies portions of *Ehr*'s device which allegedly correspond to the S-shaped bridging elements recited in the combinations of the pending claims, the annotated drawing provided in the Office Action of *Ehr*'s Fig. 16 plainly shows that those elements each cross the midlines of opposed V-shaped apices only once. It is therefore remarkable that, given that the annotated drawings in the Office Action plainly show that *Ehr*'s device is not read on by the pending claims' features, a point that Applicant has repeatedly made in this record, that the Office Action maintains that each S-shaped element instead crosses the midline three times. The patent examiner is invited to explain how it is that "one" (*Ehr*) is read on by "three" (Applicant).

Accordingly, *Ehr* fails to disclose a device that includes each and every limitation recited in the combinations of Claims 1-10 and 17.

For at least the foregoing reasons, Applicant respectfully submits that the subject matters of Claims 1-10 and 17 are not anticipated by *Ehr*, are therefore not unpatentable under 35 U.S.C. § 102, and therefore respectfully requests withdrawal of the rejection thereof under 35 U.S.C. § 102.

#### **Rejection under 35 U.S.C. § 103(a)**

In the Office Action, beginning at page 4, Claims 10-16 were rejected under 35 U.S.C. § 103(a), as reciting subject matters that allegedly are obvious, and therefore allegedly unpatentable, over *Fischell* in view of *Jang*. Applicant again respectfully requests reconsideration of this rejection.

Claim 10 relates to an expandable medical device having a combination of elements including, *inter alia*, a plurality of S-shaped bridging elements connected between interconnected ends of struts in adjacent cylindrical tubes, wherein each of the bridging elements cross a midline of the V-shapes three times and are connected entirely above the midline of the V-shapes on one cylindrical tube and entirely below the midline of the V-shapes on an adjacent cylindrical tube.

The prior art, including *Fischell* and *Jang*, fails to disclose, describe, or suggest the combinations of elements recited in Claims 10-16.

Applicant previously (*e.g.*, in the Amendment filed 21 September 2006) described certain features and objects of the devices of *Fischell* and *Jang*, and will therefore not burden the record with a rote reproduction of those discussions; they too are incorporated by reference in their entireties.

The Office Action repeated the “choice of design” argument proffered in the prior Office:

It would have been obvious . . . to move the connecting points to the locations as shown in modified Fischell-‘971 [sic] stent in view of Jang-‘053 (please, see Fig. 2 on next [sic] page) for this modified configuration is just another choice of design for Fischell-‘971 stent [sic] in view of Jang-‘053.

Applicant again strongly disagrees.

Applicant previously argued that the hypothetical construct alleged to be obvious in the Office Action would destroy the goal of *Fischell*’s stent: modification of *Fischell*’s undulating S-struts, by replacing them with or modifying them in view of *Jang*’s, would result in a stent having limited or no additional expandability after deployment of the stent in the patient’s vasculature. Applicant incorporates by reference those arguments.

Assuming, *arguendo*, that the skilled artisan would, despite the fact that *Fischell* strongly teaches away from a combination with *Jang*, look to modify *Fischell*'s stent structure with *Jang*'s connecting column's strut sets, the resulting hypothetical stent would still not include each and every element recited in the combinations of the pending claims. The Office Action again kindly includes, at page 5, a marked-up portion of figure 2 of *Fischell*, annotated with a modified S-strut and a diagonal line, as well as a new, annotated portion of figure 3 of *Jang*, with an incorrectly oriented center-line and two elements 36" darkened. In the Applicant's prior Amendments, Applicant included a reproduction of a marked up version of that illustration, which includes an alternative hypothetical combination of *Fischell* and *Jang*. Applicant respectfully submits that the illustration contained on page 5 of the Office Action would not be the stent structure the skilled artisan would arrive at from a full and fair reading of *Fischell* and *Jang*, were the routineer to find some rational reason to combine the two documents. Instead, the illustration on page 5 of the Office Action is the result of an impermissible hindsight reconstruction of the claimed subject matter using Applicant's own specification as a guide, and therefore a *prima facie* case of obviousness has not been made.

Applicant respectfully submits that, were one of ordinary skill in the art to combine *Fischell* with *Jang*, the result would be a *Fischell* stent with, essentially, *Jang* connecting column strut sets. That is, instead of becoming more undulating, as suggested in the page 5 illustration in the Office Action, the result would be a less serpentine S-strut which extends diagonally between *Fischell*'s struts 13, 14 only once, as does *Jang*'s connecting strut sets. Nowhere in *Fischell*, *Jang*, or any other evidence in the record, is there a rational reason related to the subject matter of *Fischell* or *Jang* to make *Fischell*'s S-struts more serpentine, and indeed *Jang* specifically teaches away from that configuration by disclosing less serpentine elements. Accordingly, Applicant respectfully submits that a *prima facie* case of obviousness has not been made in the Office Action.

The Office Action's rationale for modifying *Fischell*'s S-struts, "just another choice of design", falls flat in view of *Fischell*'s stated purposes and *Jang*'s disclosure. The Office Action

notably provides no rational reason related to the prior art's subject matters, why a person of ordinary skill in the art would 'change the design' of *Fischell's* device, as the Office Action alleges would have been obvious, in particular in view of the negative effects noted by Applicant on this record. The Office Action's allegation of 'choice of design' inappropriately attempts to minimize Applicant's claimed combinations, without justification. The fact remains that *Jang* plainly points towards a **less serpentine strut, not a more serpentine strut** as drawn in the Office Action. The only source of motivation to make the modification of *Fischell's* S-struts, alleged to be obvious in the Office Action, is Applicant's own specification, which is an impermissible hindsight reconstruction of Applicant's claimed combination. The Office Action, in response to this line of argument when last presented, is completely silent for a simple reason: there is no rational reason related to the prior art's subject matter to modify *Fischell's* device in the manner alleged in the Office Action to be obvious.

For at least the foregoing reasons, Applicant respectfully submits that the subject matters of Claims 10-16, each taken as a whole, would not have been obvious to one of ordinary skill in the art at the time of Applicant's invention, are therefore not unpatentable under 35 U.S.C. § 103(a), and therefore respectfully requests withdrawal of the rejection thereof under 35 U.S.C. § 103(a).

## **Conclusion**

Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of this patent application is therefore respectfully solicited.

If Mr. Bui believes that a telephone conference with the undersigned would expedite passage of this patent application to issue, he is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. If, however, additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is hereby authorized to charge fees necessitated by this paper, and to credit all refunds and overpayments, to our Deposit Account 50-2821.

Respectfully submitted,

By: /Adam J. Cermak/  
Adam J. Cermak  
Registration No. 40,391

**U.S. P.T.O. Customer Number 36844**  
Cermak Kenealy & Vaidya LLP  
515 E. Braddock Rd., Suite B  
Alexandria, Virginia 22314

703.778.6609 (v)  
703.652.5101 (f)

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